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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

THE BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, *et al.*, *Petitioners*,

v.

LEON W. BRADLEY, JR., *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

THE BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, and others, your petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on July 1, 1970.

OPINIONS BELOW

Neither the first opinion of the court below (Appendix A(1), *infra*, pp. A1-A16), later withdrawn on rehearing, nor the second opinion of the court below (Appendix A(2), *infra*, pp. A17-A33), has yet been reported.

JURISDICTION

The first opinion of the court below was entered on July 1, 1970 (Appendix A(1), *infra,* p. A1). A timely petition for rehearing, resulting in a new opinion, was denied on July 28, 1970 (Appendix A(2), *infra,* pp. A17, A29). The Clerk of the Fifth Circuit advises that no formal judgments as mandates are now entered in school board cases, and that the opinion is issued as and for the mandate in all such cases.

QUESTIONS PRESENTED

1. Whether it is lawful to direct classification of school children by race in order to remove inequities in education that were created by racial classification.

2. Whether the Constitution requires massive busing to achieve racial balance in an otherwise unexceptionable unitary school system, where such busing excludes thousands of white children from their neighborhood walk-in schools because of their race or color.

3. Whether the court below, which decreed extensive busing of school pupils in order to achieve racial balance, improperly disregarded the explicit direction of Congress, implementing the XIV Amendment under Section 5 thereof in Section 401(b) of the Civil Rights Act of 1964, that " 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

4. Whether the court below, which decreed extensive busing of school pupils in order to achieve racial balance, improperly disregarded the explicit direction of Congress, implementing the XIV Amendment under Section 5 thereof in Section 407(a)(2) of the Civil Rights of 1964, that "nothing herein shall empower any * * * court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another in order to achieve such racial balance."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Section 1 of the Fourteenth Amendment provides, in pertinent part—

> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Section 5 of the Fourteenth Amendment provides:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

3. Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. § 2000c(b)), provides:

> "As used in this title—* * *
>
> "(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

4. Section 407(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000c-6(a)) provides in pertinent part:

> "Whenever the Attorney General receives a complaint in writing * * * to the effect that * * * minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws * * * the Attorney General is authorized * * * to institute for or in the name of the United States a civil action * * * for such relief as may be appropriate * * * provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

STATEMENT

In this case the district court found and held (Final Order, August 4, 1969, p. 6) that the petitioner "Board has taken steps to eradicate the effect of past segregated schooling. The all-Negro schools remaining in Pinellas County do meet constitutional standards (*Adams* v. *Matthews*, 403 F.2d 181 (5th Cir. 1968)), under the circumstances that no feasible *Green* [v. *County School Board*, 391 U.S. 430] alternatives exist. The probabilities are that the schools will remain all-Negro until housing patterns change in the area or that new school sites can be selected which will promote desegregation."

The court of appeals however decreed massive busing involving the transportation of an additional 5400 pupils to achieve racial balancing, concluding on rehearing that the Pinellas County schools had been effectively converted into a unitary system in every respect, except student assignment in certain schools because of the concentrated black population in parts of St. Petersburg (*infra*, p. A29).

The issue thus posed permits the present substantially abbreviated Statement.

A. Earlier Proceedings

The original complaint in this case, filed May 7, 1964, sought an injunction enjoining the petitioner Board from operating a bi-racial school system in Pinellas County. On January 15, 1965, the Board was ordered to submit a complete plan for the removal of dual attendance zones, and for the opening of all public schools in Pinellas County on a non-racial basis. On March 15, 1965, the Board filed, and the district court approved, a Plan of Desegregation that had been jointly developed and to which counsel for the respondents consented. This plan called for a complete unitary school system on a geographic basis, no dual zones, no freedom of choice, and with all zone lines drawn on a rational and reasonable basis.

Two Motions for Further Relief thereafter filed were denied. The second denial was appealed, after which the court of appeals on July 12, 1967, remanded the cause for further consideration in the light of its decision in *United States* v. *Jefferson City Board of Education,* 372 F.2d 836 (C.A. 5), on rehearing in banc, 380 F.2d 385, certiorari denied *sub nom. Caddo Parish School Board* v. *United States,* 389 U.S. 840.

A further hearing was postponed at respondents' request to permit the Board to develop new zones, and on October 21, 1968, the Board reported further progress in desegregation.

The present case arises out of respondents' Motion for Further Relief thereafter filed, on December 13, 1968, in consequence of which the district court on March 6, 1969, directed the petitioner Board to adopt a comprehensive plan of desegregation consistent with *Green* v. *County School Board,* 391 U.S. 430. Such a plan was filed on April 15, 1969, and thereafter a two-day evidentiary hearing was held to consider respondents' objections thereto. Those objections were resolved by a district court order entered on August 4, 1969, from which respondents appealed to the court below.

B. Factual Background

To quote from the second opinion of the court below (*infra,* pp. A18-A19):

"The Pinellas school system covers the whole of Pinellas County with a land area of 265 square miles. The student population of the system is approximately 80,000, of which 12,700, or 16%, are Negro students. Approximately 9,500 of these Negro students live in the City of St. Petersburg, in the southernmost part of the system.

"Since 1964, when the original complaint in this case was filed up to the 1969-70 school year, there has been a gradual decrease in the percentage of students in all-Negro schools

throughout the entire system. In the 1969-70 school year, there were 102 schools in operation—72 elementary, 19 junior high, and 11 senior high schools. During the 1969-70 school year, 12 elementary schools, one junior high and one senior high school served all-Negro or virtually all-Negro student bodies. Approximately 8,400, or 66% of the 12,700 Negro students in the entire system at all levels attended all-Negro or virtually all-Negro schools.

"Under the school board's plan, the plan approved by the district court, there were to be 107 schools in operation —75 elementary, 20 junior high, and 12 senior high schools. At the elementary level, nine would remain all-Negro or virtually all-Negro. There would also remain the one all-Negro junior high and one all-Negro senior high school. Under this plan, 8,200 out of the 12,700 Negro students in the entire system at all grade levels, or 64%, would attend all-Negro or virtually all-Negro schools.

"The school board's plan does not change the already-existing majority-to-minority transfer policy, which during the 1969-70 school year has resulted in the transfer of only 62 students.[2] The plan also leaves intact two bi-racial committees operating in Pinellas County. * * *"

The issues now presented turn on the status of the all-black schools; as stated by the district court (Final Order, August 4, 1969, p. 5),

"The remaining *all-Negro* schools consist of five all-Negro elementary schools and one all-Negro junior high school. There are, in addition, two substantially all-Negro elementary schools and one substantially all-Negro high school. These schools, out of a total of 103 regular schools, are all located in the densely populated downtown St. Petersburg, area."

"[2] [Footnote in original] Fifty of these students, however, were Negroes transferring from all-Negro to predominantly white schools."

The record shows that the St. Petersburg area now has a population of about 43,000 black citizens. In 1954, about half that number lived in a heavily congested area of some fifteen square blocks; since then, their numbers have nearly doubled, and they have moved into what was formerly St. Petersburg's white residential areas, with the consequence that schools that were previously all-white walk-in schools became all-black walk-in schools. All the elementary schools in St. Petersburg today that were predominantly black prior to the ruling below are walk-in schools, as are the majority of all elementary schools in that city.

To continue with the district court's findings of fact (Final Order, August 4, 1969, pp. 5-6):

"Plaintiffs have objected to the defendant Board's plan for the schools of St. Petersburg since the proposed plan does not result in the elimination of these all-Negro schools. The Court finds that no feasible alternative has been shown to this Court for these schools. The Plaintiffs' expert, Dr. John Finger, testified in effect that the schools in the densely Negro areas could be integrated only by the use of a pupil assignment plan or a pairing plan involving additional bussing of substantial distances. This Court finds that no *feasible* alternative to zones for the all-Negro schools in St. Petersburg can be developed at this time. Additionally, the Court finds that the existence of these all-Negro schools is the result of voluntary housing patterns of Negro parents and is no longer a result, in this year 1969, of state imposed segregation of Negroes in residential areas and schools.

"The Court concludes, based on the record and in light of all suggested alternatives, including the suggestions of plaintiffs' expert, that the defendant Board has met its burden of converting the school system to one which is without so-called "White" and "Negro" schools but merely schools, a few of which, statistically, are all-Negro, but none of which are the result of a *dual* school system."

C. Action of the Court Below

Respondents appealed from the judgment of the district court dated August 4, 1969, contending that the predominantly black population of seven elementary schools, one junior high school, and one senior high school, all in St. Petersburg, involved a violation of their constitutional rights, which, they contended, entitled them to racial balancing in the schools.

Following oral argument, the court of appeals requested additional findings of fact, which the district court entered on April 28, 1970. These findings reflected the school population by race for every school of all three levels in St. Petersburg.

The district court further found (Supplemental Findings of Fact, April 28, 1970, p. 2), in response to the court of appeals' inquiry concerning the number of white students who could be assigned to the nine all-black schools if *Ellis* v. *Board of Public Instruction of Orange County,* 423 F. 2d 203 (C.A. 5), were fully complied with, that the number of white students that could be so assigned was "*none.* * * * This Court finds * * * that the utilization of *Ellis* zone lines, instead of fairly drawn zone lines, would result in an *increase* of Negro students attending the nine all-Negro schools with a concomitant decrease of Negro students presently attending majority-white schools."

On July 1, 1970, the Fifth Circuit rendered an opinion (Appendix A(1), *infra,* pp. A1-A16) that required mass busing to eliminate the all-black schools. In consequence of a petition for rehearing pointing out numerous factual errors in that opinion, it was withdrawn by the court of appeals and a new one promulgated (Appendix A(2), *infra,* pp. A17-A33), which, although still requiring mass busing, substantially modified the earlier requirements. These differences may be summarized as follows:

1. On rehearing, the Fifth Circuit found that the faculty and staff desegregation standard had been met (*infra,*

pp. A19-A20). It had earlier held precisely the contrary (*infra,* p. A4).

2. On rehearing, the Fifth Circuit held, as it had originally, that transportation, facilities, and extracurricular activities were all operated on a desegregated basis (*infra,* pp. A4, A20).

3. In respect of student assignment there were significant variances between the two opinions.

a. Originally, Palmetto Elementary School was to be paired with Northward of Clearwater, and Kings Highway with Curtis (*infra,* p. A6). In fact, Kings Highway had already been paired with Palmetto, and Northward already had 40% black students. On rehearing, the pairing of Palmetto and Kings Highway was approved, and Curtis was directed to be paired with Dunedin (*infra,* pp. A22-A23).

b. Originally, Glenoak was to be paired with Lakewood (*infra,* p. A7); on rehearing, it was ordered that the Board could, as an alternative, group Glenoak, Lakewood, and Bay Vista into one zone (*infra,* pp. A23-A24).

c. The zone lines of Lakeview were ordered redrawn to incorporate at least 400 white students in the northern part of Bay Point and Bay Vista zones and in the intervening finger of Childs Park (*infra,* pp. A7-A8). This direction incorrectly assumed that Lakeview's capacity was 1555 students when in fact that capacity was only 658. On rehearing, the Fifth Circuit ordered that Lakeview could either be paired with Maximo or grouped with Maximo and Bay Point (*infra,* p. A24).

d. There were extensive changes in respect of Campbell Park (*infra,* pp. A8-A9, A25-A26), somewhat too complex for detailed elaboration here.

e. The same comment applies to the treatment, in the two opinions, of Wildwood, West Central, and Fairmount Park, all of which were walk-in schools (*infra,* pp. A8, A25).

f. Both opinions directed the pairing of Disston Junior High with Sixteenth Street Junior High (*infra,* pp. A9-A10, A27).

g. Both opinions provided the same alternatives in respect of the senior high schools (*infra,* pp. A10-A11, A27-A28).

h. The second opinion required changes over the first in respect of student assignments to some 21 elementary schools, or close to 30% of all such schools; this is apparent from a comparison of Appendix A to the first opinion (*infra,* pp. A13-A15) with Appendix A to the second opinion (*infra,* pp. A30-A32).

Under the terms of the order on rehearing, the Board was directed to comply with the court of appeals' rezoning by August 14, 1970 (*infra,* pp. A21, A29). No stay was requested from the court of appeals, as the Fifth Circuit had earlier indicated that, in school desegregation cases, "No stay will be granted pending petition for rehearing or application for certiorari" (*Singleton* v. *Jackson Municipal Separate School Dist.,* 419 F. 2d 1211, 1222 (C.A. 5, Dec. 1, 1969).* Instead, the Board considered the alternative courses left open to it, and presented to the district court a plan adopted pursuant to the court of appeals' order on rehearing. That plan was approved by the district court on August 6, 1970; a copy of the district court's order of that date is, for the information of this Court, included as Appendix B hereto (*infra,* pp. A34-A41).

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* An application for a stay, presented here by the Governor of Florida, was denied on August 8, 1970 by Mr. Justice Black.

D. Consequences of the Ruling Below

An estimate prepared by the Board's Department of Statistical Information discloses that, pursuant to the foregoing order of August 6, 1970, some 5400 additional students must be bused back and forth on every school day.

675	of	these	must	be	transported	between	1½	and	2	miles
1725	"	"	"	"	"	"	2	"	2½	"
1550	"	"	"	"	"	"	2½	"	3	"
1000	"	"	"	"	"	"	3	"	3½	"
450	"	"	"	"	"	"	3	"	4	"

REASONS FOR GRANTING THE WRIT

This case presents in sharpest focus a question of school desegregation to which this Court has yet to give plenary consideration, an issue that is currently not only the most pressing one in the educational area but one whose resolution by the court below involves its least edifying paradox: Is classification of school children by race a proper constitutional remedy for removing the inequities in education that stemmed from racial classification?

The significance of that question is underscored by the circumstance, up to now pretty consistently disregarded by the lower courts, that Congress has explicitly declared, acting under its Section 5 power of enforcing the Fourteenth Amendment, not only that " 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance" (Sec. 401(b), Civil Rights Act of 1964, *supra,* p. 3), but also that "nothing herein shall empower any * * * court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance" (Sec. 407(a), Civil Rights Act of 1964, *supra,* p. 3).

The impressive legislative history underlying the quoted provisions is also involved in *Swann* v. *Charlotte-Mecklen-*

burg Board of Education, No. 281, this Term, in which certiorari was granted last June (399 U.S. 926), although there the legislative materials outlined below have not yet been fully brought to this Court's attention. Nor has this Court up to now considered in depth the extent to which Congressional enforcement action under Section 5 of the XIV Amendment should guide judicial interpretation of that Amendment's substantive provisions.

The present case is free from any and all complications arising out of school board intransigence, or out of "freedom" of choice plans, or indeed out of subterfuges or colorable ploys of any kind. It presents squarely the precise issues that are currently so very troublesome, in all parts of the Nation, issues that this Court up to now has not resolved:

Does anything in the Constitution require massive busing to achieve racial balance in an otherwise unexceptionable unitary school system, particularly when Congress has solemnly declared racial balance to be no part of desegregation?

Bearing in mind the constitutional norm (*Alexander* v. *Board of Education,* 396 U.S. 19, 20) of "unitary school systems within which no person is to be excluded from any school because of race or color," is the busing-for-racial-balance decreed below, which plainly results in excluding white children from their neighborhood walk-in schools because of their race or color, consistent with that norm?

First. No decision of this Court has required racial balancing, i.e., classifying by race in order to extirpate racial classification. To the contrary, every case here from *Brown* v. *Board of Education I,* 347 U.S. 483, decided in 1954, through *Alexander* v. *Board of Education,* 396 U.S. 19, determined last Term, has iterated and reiterated the Constitution's mandate for wholly non-racial public school systems.

In *Briggs* v. *Elliott,* 132 F. Supp. 776, 777 (E.D.S.C.), a strong three-judge district court, which included Parker and Dobie, Circ. JJ., declared that—

> "The Constitution, in other words, does not require integration. It merely forbids discrimination."

Insofar as what was there said dealt with freedom of choice, the case is plainly no longer law after *Green* v. *County School Board,* 391 U.S. 430. But insofar as the decision held that the Constitution does not require racial balancing nor command the abandonment of bona fide neighborhood school plans simply because they result in racial imbalance, it presently has the support of seven and perhaps eight circuits:

C.A. 1: *Springfield School Committee* v. *Barksdale,* 348 F.2d 261.

C.A. 2: *Offermann* v. *Nitkowski,* 378 F.2d 22, 24.

C.A. 3: *Evans* v. *Ennis,* 281 F.2d 385, 394, *semble,* certiorari denied, 364 U.S. 933.

C.A. 4: *Swann* v. *Charlotte-Mecklenburg Board of Education I,* 369 F.2d 29, 32; *Swann* v. *Charlotte-Mecklenburg Board of Education II,* No. 281, this Term.

C.A. 6: *Deal* v. *Cincinnati Board of Education I,* 369 F.2d 55, certiorari denied, 389 U.S. 847; *Deal* v. *Cincinnati Board of Education II,* 419 F.2d 1387.

C.A. 7: *Bell* v. *School City of Gary, Indiana,* 324 F.2d 209, certiorari denied, 377 U.S. 924; *United States* v. *School District 151 of Cook County,* 404 F.2d 1125, *semble.*

C.A. 8: *Kemp* v. *Beasley III,* 423 F.2d 851, 857.

C.A. 10: *Downs* v. *Board of Education of Kansas City,* 336 F.2d 988, certiorari denied, 380 U.S. 914.

Only the Fifth Circuit, which formerly espoused the same view (e.g., *Avery* v. *Wichita Falls Indep. Sch. Dist.,* 241 F.2d 230, certiorari denied, 353 U.S. 938; *Evers* v.

Jackson &c. Sch. Dist., 329 F.2d 408, 410), has since jettisoned its earlier doctrine, and now adheres in all respects to the racially-oriented policy of racial balancing, policy that ruled the present case. *United States* v. *Jefferson County Board of Education,* 372 F.2d 836, adhered to on rehearing in banc, 380 F.2d 385, 389 n. 3 (expressly overruling nine earlier cases to the contrary), certiorari denied *sub nom. Caddo Parish School Board* v. *United States,* 389 U.S. 840. There is no need to include here a listing of the many Fifth Circuit cases applying the *Jefferson County* doctrine.

It is sufficient simply to emphasize, what indeed will be apparent from the citations above, that on the issue of mass busing to achieve racial balance there exists a live and continuing conflict of circuits that only this Court can resolve.

Second. The concept of racial balancing as a form of desegregation was explicitly and emphatically disapproved by Congress when it enacted the Civil Rights Act of 1964. The legislative history reflects the following steps: First, after the President noted the problems flowing from racial imbalance, the first bills thereafter introduced contained numerous provisions dealing with that problem. The House Judiciary Committee then struck out every reference to racial imbalance. The anti-racial-balancing clause now in Section 401(b) was accepted on the House floor by the Chairman of the Judiciary Committee, in charge of the bill, while the anti-racial-balancing proviso now in Section 407(a) was actually drafted by the four bipartisan leaders who supported and indeed promoted the measure in the Senate. An amendment to strike the latter proviso, proposed by the leader of the Senate opposition to the legislation, was not adopted. Here there is room only for the highlights of this impressive legislative development:

1. The measure that became the Civil Rights Act of 1964 was recommended to Congress by President Kennedy. He requested Congress to "assert its specific constitutional

authority to implement the 14th Amendment" (H.R. Doc. 124, 88th Cong., 1st sess., June 19, 1963, p. 6) with respect to achieving desegregation in the public schools, first by accelerating the litigation process, second by a program of technical and financial assistance to school districts "engaged in the process of meeting the *educational problems flowing from desegregation or racial imbalance* * * *" (*id.*, p. 7; italics added).

2. The first version of the bills introduced immediately thereafter and designed to effectuate the Presidential message (H.R. 7152, Sen. 1731; both 88th Cong., 1st sess.) had identical provisions. Title III of each, entitled "Desegregation of Public Education," contained no less than five subsections specifically looking to the correction of racial imbalance.*

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* [Our italics in each instance:]

"SEC. 303. (a) The commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit, to render technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools or other plans designed to deal with *problems arising from racial imbalance* in public school systems. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with *special educational problems occasioned by desegregation or racial imbalance*, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

"(b) The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation or *measures to adjust racial imbalance in public school systems.* * * *

"SEC. 304. (a) A school board which has failed to achieve desegregation in all public schools within its jurisdiction, or a

3. Sen. 1731 never got off the ground, despite its sponsorship by no less than 45 senators, while H.R. 7152 was, following extensive hearings, completely rewritten in committee. There was reported out an entirely new measure, see H.R. Rep. 914, 88th Cong., 1st sess., in which former Title III was renumbered Title IV, and in which every mention of "racial imbalance" was deleted. The justification for such deletion was set forth in the additional views of Messrs. McCulloch of Ohio, Lindsay of New York, Cahill of New Jersey, Shriver of Kansas, MacGregor of Minnesota, Mathias of Maryland, and Bromwell of Iowa (*id.*, Part 2, pp. 21-22):

> "The committee failed to extend this assistance to problems frequently referred to as 'racial imbalance' as no adequate definition of this concept was put forward. The committee also felt that this could lead to the forcible disruption of neighborhood patterns, might entail inordinate financial and human cost and create more friction than it could possibly resolve."

---

school board which is confronted with *problems arising from racial imbalance* in the public schools within its jurisdiction, may apply to the Commissioner, either directly or through another governmental unit, for a grant or loan, as hereinafter provided, for the purpose of aiding such school board in carrying out desegregation or in dealing with *problems of racial imbalance.*

"(b) The Commissioner may make a grant under this section, upon application therefor, for—

"(1) the cost of giving to teachers and other school personnel inservice training in dealing with *problems incident to desegregation or racial imbalance in public schools;* and

"(2) the cost of employing specialists in *problems incident to desegregation or racial imbalance* and of providing other assistance to develop understanding of these problems by parents, schoolchildren, and the general public.

"(c) * * * In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration * * * the nature, extent, and gravity of its *problems incident to desegregation or racial imbalance,* and such other factors as he finds relevant."

Even so, the elimination of the references to racial imbalance did not satisfy one of the dissenting members, who complained (H.R. Rep. 914, *supra,* at p. 84) that "this action [i.e., such elimination] is a matter of 'public relations' or semantics, devised to prevent the people of the United States from recognizing the bill's true intent and purpose. The administration apparently intends to rely upon its own construction of 'discrimination' as including the lack of racial balance as distinguished from a statutory reference to 'racial imbalance' * * *."

4. As reported out by the Judiciary Committee on November 20, 1963 (H.R. Rep. 914, *supra,* at p. 5), Section 401(b) provided that

> " 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin."

When the bill was considered on the floor of the House on February 6, 1964, Mr. Cramer of Florida moved an amendment to provide that " 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." Chairman Celler of the Judiciary Committee accepted that amendment (110 Cong. Rec. 2280), and, as thus amended, Section 401(b) was not further changed in the course of its passage through Congress; it was carried onto the statute book as amended by Mr. Cramer.

5. The House passed H.R. 7152 on February 10, 1964 (110 Cong. Rec. 2805). In the Senate, the measure was placed on the calendar without reference to committee (*id.* 3719, Feb. 26), and was taken up for consideration on March 26 (*id.* 6417). As is well known, three months of debate ensued.

Because of the absence of committee action, H.R. 7152 was rewritten by the joint leadership in the course of the debate, and on May 26, Amendment No. 656 in the nature

of a substitute was offered by Senators Dirksen (Minority Leader), Mansfield (Majority Leader), Humphrey (Majority Whip), and Kuchel (Minority Whip) (110 Cong. Rec. 11926). Included in Amendment No. 656 was a new proviso to Section 407(a) reading as follows (*id.* at 11929):

> "provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

This proviso did not appear either in H.R. 7152 as reported out by the House Judiciary Committee (H.R. Rep. 914, 88th Cong., 1st sess., p. 7) or in H.R. 7152 as it reached the Senate.

6. On June 2, Senator Russell of Georgia introduced Amendment No. 766 to strike the quoted proviso from the Dirksen-Mansfield-Humphrey-Kuchel substitute (110 Cong. Rec. 12436-37), contending at some length that deleting the proviso would eliminate the sectional aspects of the pending bill and would give the Attorney General authority to integrate outside the South. Senator Russell contended that, with the proviso included, the Attorney General would act only in the South, and the courts would be powerless to touch *de facto* segregation in the North. (110 Cong. Rec. 12438-41.)

7. Two days later, Senator Humphrey undertook to explain Title IV of the bipartisan substitute contained in Amendment 656 (110 Cong. Rec. 12706 *et seq.*). He said on the matter now in issue (*id.* at 12714):

> "Next, changes are made to resolve doubts that have been expressed about the impact of the bill on the problem of correcting alleged racial imbalance in public schools. The version enacted by the House was not intended to permit the Attorney General to bring suits to correct such a situation, and, indeed, said as much

in section 401 (b). However, to make this doubly clear, two amendments dealing with this matter are proposed.

"The first provides that nothing in title IV 'shall empower any court' or official of the United States to issue 'any order' seeking to achieve 'a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.' This addition seeks simply to preclude an inference that the title confers new authority to deal with 'racial imbalance' in schools, and should serve to soothe fears that title IV might be read to empower the Federal Government to order the busing of children around a city in order to achieve a certain racial balance or mix in schools.

"Furthermore, a new section 410 would explicitly declare that 'nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.'

"Thus, classification along bona fide neighborhood school lines, or for any other legitimate reason which local school boards might see fit to adopt, would not be affected by title IV, so long as such classification was bona fide. Furthermore, this amendment makes clear that the only Federal intervention in local schools will be for the purpose of preventing denial of equal protection of the laws."

Shortly thereafter this additional colloquy took place (*id.* at 12715, 12717):

"Mr. BYRD of West Virginia. Can the Senator from Minnesota assure the Senator from West Virginia that under title VI school children may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve so-called racial imbalance in the schools?

"Mr. HUMPHREY. I do. * * * (p. 12717) I should like to make one further reference to the Gary case.*

* The reference is to *Bell* v. *School City of Gary, Indiana*, 324 F.2d 209 (C.A. 7), certiorari denied, 377 U.S. 924.

> This case makes it quite clear that while the Constitution prohibits segregation, it does not require integration. The busing of children to achieve racial balance would be an act to effect the integration of schools. In fact, if the bill were to compel it, it would be a violation, because it would be handling the matter on the basis of race and we would be transporting children because of race. The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the school systems. The natural factors such as density of population, and the distance that students would have to travel are considered legitimate means to determine the validity of a school district, if the school districts are not gerrymandered, and in effect deliberately segregated. The fact that there is a racial imbalance per se is not something which is unconstitutional. That is why we have attempted to clarify it with the language of section 4." *

8. Senator Dirksen, another co-sponsor, explained Amendment 656 on the following day (110 Cong. Rec. 12817 *et seq.*). Thereafter, on June 10, Senator Dirksen introduced Amendment 1052, which was in the nature of a substitute for Amendment 656, designed to include Senator Morton's amendment on jury trials (110 Cong. Rec. 13310); the proviso to Sec. 407 (a), see *id.* at 13312, was left unchanged from what it had been in the earlier version.

The balance of the legislative history of the Civil Rights Act does not require extended treatment. Amendment 1052 was agreed to on June 17 (*id.* at 14239), while the bill as thus amended passed the Senate two days later (*id.* at 14511). The House ultimately concurred in the Senate amendment (*id.* 14631, 15869), and H.R. 7152 became law on July 2 (Pub. L. 88-352, 78 Stat. 241).

Third. Notwithstanding the foregoing sharp and distinct history of Congressional rejection of racial balancing

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* Presumably Title IV rather than section 4 was intended.

as a form of desegregation, the provisos in §§ 401(b) and 407(a) of the Civil Rights Act of 1964 have been either consistently misread or else simply disregarded—we would not be far from the mark to say that up to now they have been trivialized—by courts that have had these solemn statutory directions called to their attention. See *United States* v. *Jefferson County Board of Education,* 372 F.2d 836 (C.A. 5), on rehearing in banc, 380 F.2d 385, certiorari denied *sub nom. Caddo Parish School Board* v. *United States,* 389 U.S. 840; *United States* v. *School District 151 of Cook County,* 404 F.2d 1125 (C.A. 7); *Keyes* v. *School District No. One, Denver,* 303 F. Supp. 289 (D. Colo.); *Matter of Addabbo* v. *Donovan,* 22 App. Div.2d 383, 256 N.Y. Supp.2d 178.

We think that few if any portions of Congressional legislation have ever been treated with more judicial disdain—or with less judicial understanding—than the anti-racial-balancing provisos of the Civil Rights Act of 1964. Significantly, not a single reported case of which we are aware has yet ascertained the provenance of the proviso in § 407(a), or has up to now commented on the Russell proposal to strike that proviso from the bill.

The cases thus present a most unjustified if thoroughly ironical result: The provisions in §§ 401(b) and 407(a) seeking to eliminate racial balancing as a permissible concept of desegregation, provisions that had the support of dedicated civil rights leaders on both sides of the aisle in both houses, one of which indeed was formulated by those leaders, have since been brushed aside, very cavalierly brushed aside, in the name of desegregation. Thus the decision below lends substance to the taunt of the veteran leader of the last-ditch rear-guard action against the Civil Rights Act of 1964, that the proviso in § 407(a) made the measure a purely sectional one aimed only at the former Confederacy. Otherwise stated, the court below ever since its *Jefferson County* decisions, 372 F.2d 836 and

380 F.2d 385, has succeeded in doing what Senator Russell of Georgia and his cohorts were quite unable to do on their own, it has cut the anti-racial-balancing provision out of the law.

Such disregard of Congressional action constitutes, we submit, still another reason for review by this Court.

Fourth. As has been seen, *supra* pp. 14-15, Congress enacted the Civil Rights Act of 1964 in response to the Presidental exhortation to implement the XIV Amendment; this is precisely what Section 5 of that Amendment empowers Congress to do; this is precisely what Congress in fact did; and in doing so Congress expressly declared, not once but twice, not inadvertently or in passing but advisedly, that desegregation shall not mean racial balancing.

At the very least, this is a declaration entitled to far more respect than it has up to now been accorded by the court below. Certainly this Court has consistently supported every Congressional determination in the civil rights enforcement area, *South Carolina* v. *Katzenbach,* 383 U.S. 301; *Katzenbach* v. *Morgan,* 384 U.S. 641; *Cardona* v. *Power,* 384 U.S. 672; *Gaston County* v. *United States,* 395 U.S. 285; cf. *Atlanta Motel* v. *United States,* 379 U.S. 241, 279-291 (Douglas J., concurring), and we cite XIV and XV Amendment cases interchangeably, since, as the Court has recognized, the problem of the scope of Congressional enforcement is identical under both Amendments.

Contrariwise, the court below has refused to defer to the Congressional view of proper enforcement of the XIV Amendment in school desegregation cases—which constitutes still another reason for this Court now to give plenary consideration to the relative role of Congress and the courts in respect of enforcing that Amendment.

Fifth. In the present case there will be no occasion to consider whether a Congressional formulation under the XIV Amendment can restrict, abrogate, or limit the sub-

stantive guarantees of that Amendment, compare *Katzenbach* v. *Morgan,* 384 U.S. at 651n.10 with *id.* at 668, because, quite apart from anything in §§ 401(b) and 407(a) of the Civil Rights Act of 1964, nothing in the Constitution of the United States permits, much less requires, massive busing of school children to achieve racial balancing.

For the very concept of racial quotas, the concept that, realistically, lies at the heart of the present case—the very concept of racial quotas recalls the odious *numerus clausus* that so disfigured education in Central Europe for many decades, and that half a century ago was feared by many to have extended its ugly tentacles into some of America's oldest universities.

Just as the Equal Protection Clause does not require racial balancing in jury selection (*Cassell* v. *Texas,* 339 U.S. 282, 286-287, 290-291; *Swain* v. *Alabama,* 380 U.S. 202, 208-209), so likewise it does not require racial balancing in school administration.

The evils that resulted from racial classification in the operation of dual school systems will be compounded rather than cured by the injection of racial classification into the operation of unitary school systems. The direction (*Alexander* v. *Board of Education,* 396 U.S. 18, 20) "to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color" surely forbids the result below, which in fact excludes several thousand white children from the walk-in schools nearest their homes simply because admitting them there fails to achieve overall racial balancing within the entire system.

Past discrimination in one direction does not justify present discrimination in another. Two wrongs never yet made one right, least of all when sought to be committed in the guise of implementing the constitutional values of the Equal Protection Clause.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted; and we urge that this case then be set for argument with or shortly after No. 281, *Swann* v. *Charlotte-Mecklenburg Board of Education.* In the event that the Court should take such action, counsel for these petitioners are prepared to proceed under an accelerated briefing schedule.

Respectfully submitted.

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SEPTEMBER 1970.

APPENDIX

APPENDIX A

OPINIONS BELOW

1. First Opinion

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28639

LEON W. BRADLEY, JR., a minor, by LEON W. BRADLEY, SR., his father and next friend, et al., *Plaintiffs-Appellants,*

v.

BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, et al., *Defendants-Appellees.*

Appeal From the United States District Court for the Middle District of Florida

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(July 1, 1970)

Before SIMPSON, MORGAN and INGRAHAM, Circuit Judges.

MORGAN, Circuit Judge: The issue presented in this school desegregation case is whether the Pinellas County, Florida, public school system is unitary. The district court, by its final order of August 4, 1969, held that the desegregation plan submitted by the school board for the year 1969-1970 (hereinafter, the school board's plan) effectively "converted the old dual system to a unitary

system in which racial discrimination is eliminated".[1] The school board's plan has not been put into effect pending this appeal. From the district court's order, plaintiffs filed notice of appeal to this court on September 12, 1969. Upon oral argument and this court's request for additional findings of fact, the district court entered its supplemental findings on April 28, 1970.

Tested against the six criteria of *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968) —faculty, transportation, staff, facilities, extracurricular activities, and student body composition—and the end to be achieved as set out in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969)—that the school system no longer operate as a dual system based on race or color but as a "unitary school system within which no person is to be effectively excluded from any school because of race or color"—we find the school board's plan, as approved by the district court, to be deficient in both faculty and staff assignment throughout the system and in student assignment in certain schools. In keeping with the approach of *Ellis* v. *The Board of Public Instruction of Orange County, Florida,* 5 Cir., 1970, —— F. 2d —— [No. 20,124, February 17, 1970]; *Mannings* v. *The Board of Public Instruction of Hillsborough County, Florida,* 5 Cir., 1970, —— F. 2d —— [No. 28,643, May 11, 1970]; and *Davis* v. *Board of School Commissioners of Mobile County,* 5 Cir., 1970, —— F. 2d —— [No. 29,332, June 8, 1970]; we will review all the requisites of *Green,* supra, to make a final determination as to whether Pinellas County has been effectively converted into a unitary system.

The Pinellas school system covers the whole of Pinellas County with a land area of 265 square miles. The student

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[1] The school board's plan has been revised and amended throughout the course of litigation. The figures used below are based on school population by race as of April 23, 1970.

population of the system is approximately 80,000, of which 12,700, or 16%, are Negro students. Approximately 9,500 of these Negro students live in the City of St. Petersburg, in the southernmost part of the system.

Since 1964, when the original complaint in this case was filed up to the 1969-70 school year, there has been a gradual decrease in the percentage of students in all-Negro schools throughout the entire system. In the 1969-70 school year, there were 102 schools in operation—72 elementary, 19 junior high, and 11 senior high schools. During the 1969-70 school year, 12 elementary schools, one junior high and one senior high school served all-Negro or virtually all-Negro student bodies. Approximately 8,400, or 66%, of the 12,700 Negro students in the entire system at all levels attended all-Negro or virtually all-Negro schools.

Under the school board's plan, the plan approved by the district court, there were to be 107 schools in operation—75 elementary, 20 junior high, and 12 senior high schools. At the elementary level, nine would remain all-Negro or virtually all-Negro. There would also remain the one all-Negro junior high and one all-Negro senior high school. Under this plan, 8,200 out of the 12,700 Negro students in the entire system at all grade levels, or 64%, would attend all-Negro or virtually all-Negro schools.

The school board's plan does not change the already-existing majority-to-minority transfer policy, which during the 1969-70 school year has resulted in the transfer of only 62 students.[2] The plan also leaves intact two bi-racial committees operating in Pinellas County. We do not disapprove of either of these two features of the school board's plan.

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[2] Fifty of these students, however, were Negroes transferring from all-Negro to predominantly white schools.

Faculty and Staff

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson Municipal Separate School District,* 5 Cir., 1969, 419 F. 2d 1211, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. This standard has not been met in the Pinellas County school system. It is clear that the board's temporary assignment of two minority teachers to each school and its promise to meet the 87.5%-white—12.5%-Negro faculty ratio in the future does not comply with our *Singleton* decision. The board is therefore directed to formulate faculty assignments which comply with *Singleton* by July 15, 1970.

Transportation, Facilities, and Extracurricular Activities

From the record, it appears that the Pinellas County transportation system is operated on a desegregated basis. The district court, through its approval of the school board's Exhibits D-1, D-2, and D-3, found that the transportation is equally available to both Negro and white students in Pinellas County.

The facts indicate that the extracurricular activities and facilities of the Pinellas County schools are also operated on a desegregated basis. There is no complaint regarding transportation, extracurricular activities or facilities.

The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson,* supra, as to transportation, school construction, and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined the board's proposed plan, and, on our own initiative, have considered various means of modifying the plan so as to eliminate all-Negro or virtually all-Negro student bodies while at the same time maintaining the neighborhood school concept of the school system. The Pinellas school board does not purport to use the strict neighborhood assignment system that was applicable in *Ellis,* supra, but rather employs attendance zones based on discretionary zone lines. We find that the situation can be greatly improved by pairing some schools located in close proximity to each other, as was done in *Mannings,* supra, and by redrawing the zone lines in several instances.

In the following pages of this opinion, we undertake to set out the modifications of the school board's plan which will be necessary to achieve an assignment of students commensurate with a unitary system. The modifications reduce the number of all-Negro or virtually all-Negro elementary schools from nine, as contemplated by the district court-approved board's plan, to three. The modification will desegregate all junior and senior high schools in the system. Instead of 64% of the Negro students being assigned to all-Negro schools, as would be the case under the school board's plan, the result under our modifications will be 14.2% (1,738 students instead of 8,700). Every Negro child will attend an integrated school at some time during his educational career.

Attached as Appendix A is a chart depicting student body composition by school and race under the district court-approved board plan and the plan as modified by this court. The district court is directed to implement the board's plan as herein modified before August 1, 1970.

The majority of the Negro population in the Pinellas school system is situated in a densely populated 40-square

block area in the middle of St. Petersburg. Nine of the 11 schools which would remain all-Negro or virtually all-Negro under the board's plan are located within this area—seven elementary, one junior high, and one senior high. Together, these nine schools enrolled 7,019, or 58%, of the entire Negro student population in the school system, during the 1969-70 school year.

The other two all-Negro or virtually all-Negro schools remaining under the board's plan are located in the urban area of the City of Clearwater in the northern sector of Pinellas County. Both are elementary.[3]

As for these two all-Negro Clearwater schools, we find that each can be effectively desegregated through pairing with schools with contiguous attendance zones. Curtis Elementary (360 Negroes, 0 white) and Palmetto Elementary (331 Negroes, 0 white) are clustered in the City of Clearwater in close proximity to North Ward (Clw.) (163 Negroes, 289 whites) to the southwest and Kings Highway Elementary (0 Negroes, 718 whites) to the northeast. It is ORDERED that the Curtis Elementary attendance zone be paired with that of Kings Highway Elementary, and that the Palmetto attendance zone be paired with that of North Ward Elementary (Clw.). The resulting enrollment in each of the new paired zones would be: Curtis-Kings Highway, 360 Negroes, 718 whites; Palmetto-North Ward (Clw.), 494 Negroes, 289 whites.

Turning to the nine schools in St. Petersburg which would remain all-Negro or virtually all-Negro under the school board's plan, the district court found that as to

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[3] We find that the board's plan for converting Union Academy into a special education center and distributing its Negro student body between Sunset Hills and Tarpon Springs and for implementing a similar plan for Lincoln Heights, and for reassignment of students to desegregate Ridgecrest all are effective in desegregating the three formerly all-Negro schools in the upper part of Pinellas County.

these schools "no feasible plan" of desegregation was shown other than the school board's plan. On remand for supplemental findings, the district court found that no additional white students would be assigned to these nine schools if the attendance zone lines were changed so that a neighborhood school attendance policy (as set out in *Ellis*, supra) were followed.

We find that the all-Negro or virtually all-Negro junior high school and senior high school in St. Petersburg, as well as four of the seven elementary schools which would remain all-Negro or virtually all-Negro under the board's plan, can be desegregated through pairing and relocation of zone lines without creating impractical attendance zones or inordinate transportation problems. In setting out our modifications below for the schools in St. Petersburg, we refer to the zone lines and attendance figures utilized in the system during the 1969-70 school year and apply our modifications to those zone lines and attendance figures. In so doing, we reject the zones proposed by the board for schools hereinafter discussed and ORDER implementation of the following modifications of existing zones.

ELEMENTARY SCHOOLS

The 1969-70 attendance zone of Glenoak Elementary (560 Negroes, 7 whites) is contiguous with that of Lakewood Elementary (10 Negroes, 504 whites). Many of the white students in the Lakewood zone have traveled farther to attend Lakewood than they would have to travel were they to attend Glenoak. As for the remaining students in both zones, since the two schools are only one and one-half miles apart, these two contiguous zones are to be paired. Under such pairing, the resulting racial composition of the new school zone would be 570 Negroes and 511 whites.

The 1969-70 attendance zone lines of Lakeview Elementary (772 Negroes, 4 whites) are bounded on the south

by a thin finger of Child's Park Elementary school zone. Immediately thereunder is the Bay Point attendance zone (4 Negroes, 727 whites) and the Bay Vista attendance zone (8 Negroes, 645 whites), both of which are large, and both Bay Vista and Bay Point school buildings are in the southern part of their respective zones. Many students in these two zones live closer, or as close to the Lakeview school as they do to Bay Point or Bay Vista. We ORDER the zone lines of Lakeview to be redrawn so as to incorporate at least 400 white students living in the northern parts of the Bay Point and Bay Vista zones and the intervening finger of the Child's Park zone. This additional influx of students into Lakeview would not strain that facility as the school board's plan itself specifies a 1,555 student capacity in that facility. The resulting proportion of Negroes to whites in the formerly all-Negro Lakeview Elementary School would be 772 Negroes and 404 whites.

On the western side of the 40-square-block concentration of Negroes in St. Petersburg area is Wildwood Elementary attendance zone (752 Negroes, 1 white) bounded on the west by Child's Park Elementary and Fairmont Elementary (66 Negroes, 182 whites), and bounded on the north by West Central Elementary (147 Negroes, 332 whites). It is ORDERED that the zone lines of Fairmont be redrawn so as to incorporate 80 Negro students from the southeastern segment of the Wildwood zone. Wildwood and West Central are ORDERED to be paired, as the schools are only one and one-half miles apart. Under such modification, the proportion of Negro and white students within the resulting two attendance zones would be: Fairmont—146 Negroes, 182 whites; Wildwood-West Central—819 Negroes, 333 whites.

In the northeast section of the 40-square-block area is Campbell Park Elementary (701 Negroes, 0 whites). It is bounded on the north by the attendance zones of Wood-

lawn Elementary (4 Negroes, 270 whites) and on the northeast by North Ward (2 Negroes, 298 whites). The zone lines of Woodlawn are ORDERED to be redrawn so as to incorporate 160 Negro students from the northern part of the Campbell Park zone. Most of the students so incorporated would not have to travel any farther to attend Woodlawn as they reside equidistant from both schools. Also, Campbell Park is ORDERED to be paired with North Ward, and the zone lines of the resulting new zone are to be extended into the Woodlawn zone to incorporate 100 white students presently in the Woodlawn zone into the new zone. Those elementary students in the northernmost corner of North Ward (approximately 50), closer to the North Shore Elementary School to the north, should be assigned to the North Shore attendance zone. The proportion of Negroes to whites resulting in each of the two new zones would be: Woodlawn —164 Negroes, 170 whites; North Ward-Campbell Park—543 Negroes, 348 whites.

There are two additional schools that are to be completed and staffed by the beginning of the Fall of 1970 —School "A", in upper Pinellas County, and School "G", in St. Petersburg. The district court is directed to incorporate these schools, and any other additional elementary facilities which have heretofore not been in operation, into the system on a desegregated basis, and as will be consistent with the above modifications.

JUNIOR HIGH SCHOOLS

The board plan leaves one all-Negro junior high school, Sixteenth Street Junior High (1,573 Negroes, 0 whites). Its attendance zone lines are nearly co-extensive with the 40-square-block Negro concentration in St. Petersburg. Of the four contiguous junior high school attendance zones, that of Disston to the west is the zone in which the school itself is closest to Sixteenth Street School. Disston Junior

High (29 Negroes, 971 whites) is approximately three miles from Sixteenth Street Junior High. All of the other contiguous junior high attendance zones are more expansive and the junior high schools therein are more distant.

Having considered the capacities of the schools, the distances to be traveled, and the alternatives involving the other junior high schools in St. Petersburg, Disston Junior High is ORDERED to be paired with Sixteenth Street Junior High within their present 1969-70 attendance zones.[4] The resulting proportion of Negroes to whites in the new zone would be 1,602 Negroes and 971 whites.

SENIOR HIGH SCHOOLS

Likewise, one senior high school, Gibbs Senior High School (992 Negroes, 1 white) would remain all-Negro under the board plan. Its attendance zone boundaries are exactly co-extensive with the 40-square-block area, and all three contiguous senior high school attendance zones extend outward covering more than twice the area of the Gibbs zone. Two of the three contiguous zones have the high schools situated in relatively close proximity to Gibbs —St. Petersburg Senior High (128 Negroes, 1082 whites) being one and one-half miles away, and Boca Ciega Senior High (65 Negroes, 1873 whites) being two miles distant. Desegregation of Gibbs must be accomplished by either of the two following methods:

> (1) Extend the zone lines of the Boca Ciega attendance zone into the southwestern section of the Gibbs zone so as to incorporate 200 Negroes into the Boca Ciega zone. Then draw a new zone line running north to south between Gibbs Senior High

[4] Since the capacity of Sixteenth Street Junior High is twice that of Disston Junior High, a feasible pairing plan would assign one of the three grades of these "middle schools" to Disston, and assign the other two grades to Sixteenth Street.

and St. Petersburg Senior High so as to divide the remaining 800 Negroes in the Gibbs zone and the 1082 whites in the St. Petersburg High zone equally between St. Petersburg Senior High and Gibbs Senior High. The resulting proportion of Negro to white in these three redrawn zones would be: Boca Ciega —265 Negroes, 1873 whites (the additional 200 Negroes in the Boca Ciega facility would still leave that facility short of capacity); St. Petersburg—528 Negroes, 541 whites; Gibbs—400 Negroes, 541 whites.

(2) An alternative for the desegregation of Gibbs Senior High is to close the present Gibbs facility and redraw the zone lines of the three contiguous high school zones so as to incorporate in equal numbers the Negro students in the present Gibbs zone. The district court is ORDERED to give consideration to the views of the school board and the advice given the school board by the bi-racial committees as to the choice between the alternatives. The school facilities in the three contiguous high school zones are large and would not be strained by the influx of the additional 330 Negro students.

In conclusion, we feel that the modifications herein ordered to be implemented before the September Term of the 1970-71 school year effectively convert the Pinellas County student body composition into a unitary school system. It is noted that these modifications, while leaving three all-Negro elementary schools in the center of St. Petersburg, reduce from 64% to 14.2% the percentage of Negroes attending all-Negro schools, and all these Negroes will later attend desegregated junior and senior high schools.

The district court is further directed to order that a bi-racial committee similar in function to that established in *Ellis*, supra, be implemented and that the majority to

minority transfer policy be made available to all students. See pages 10-11 of *Mobile*, supra, slip opinion, as to the operational correlation between these two features of the school plan for the 1970-71 school year.

Deficiencies To Be Remedied

We conclude that three of the six elements which go to make up a unitary school system have been accomplished in Pinellas County: transportation, extracurricular activities, and facilities. The deficiencies in faculty and staff desegregation must be remedied not later than July 15, 1970, and those in student composition not later than August 1, 1970, on the basis heretofore set out.

Once the orders and directions have been effectuated in accordance with the standards heretofore set forth, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court stated in *Green*, supra, ". . . whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed". 391 U.S. 439.

Reversed and Remanded with directions.

APPENDIX "A"

School	*Projected Student Enrollment Under Board's Proposed Plan*		*Projected Student Enrollment Under Modifications Ordered by this Court*	
	Negroes	*Whites*	*Negroes*	*Whites*
Elementary				
Anona Elem.	120	520	120	520
Azalea Elem.	0	831	0	831
Bay Point Elem.	1	724	4	477
Bay Vista Elem.	0	725	8	495
Bear Creek	0	370	0	370
Belcher Elem.	1	779	1	779
Belleair	70	680	70	680
Blanton	0	610	0	610
Campbell Park	730	0	543	348
Childs Park	200	190	200	190
Clearview Ave.	0	568	0	568
Cross Bayou	0	580	0	580
Curtis Elem.	325	0	360	718
Dunedin Elem.	37	792	37	792
Fairmount Park	70	195	146	182
Fifty-Fourth Ave.	0	643	0	643
Forest Hills	0	224	0	224
Fuguitt	0	740	92	595
Glenoak	356	4	570	511
Gulf Beaches	0	377	0	377
Gulfport	6	504	6	504
Harris Elem.	0	194	0	194
High Point Elem.	0	605	0	605
Jordan Elem.	463	0	487	0
Kings Highway	0	760	Paired with Curtis Elem.	
Lakeview	1090	6	772	404
Lakewood	0	586	Paired with Glenoak Elem.	

School	*Projected Student Enrollment Under Board's Proposed Plan*		*Projected Student Enrollment Under Modifications Ordered by this Court*	
	Negroes	*Whites*	*Negroes*	*Whites*
Largo Central	1	659	81	478
Lealman Ave.	0	487	0	487
Lincoln Heights	0	0	0	0
Lynch Elem.	0	934	0	934
Madeira Beach Elem.	0	553	0	553
Melrose	644	0	636	0
Mildred Helms	0	850	116	681
Mt. Vernon	0	445	0	445
North Shore	0	570	0	600
North Ward-Clw.	170	280	Paired with Palmetto Elem.	
North Ward-S.P.	14	306	Paired with Campbell Park El.	
Northwest	0	385	0	385
Norwood	0	292	0	292
Oakhurst	0	900	133	787
Oldsmar	8	317	8	317
Orange Grove	0	370	0	370
Ozona	0	205	0	205
Palm Harbor	0	225	0	225
Palmetto	330	0	494	289
Pasadena	0	500	0	500
Perkins	694	0	615	0
Pinellas Park	0	708	0	708
Plumb	0	675	0	675
Ponce de Leon	0	775	0	775
Ridgecrest	380	0	64	416
Rio Vista	0	481	0	481
Roser Park	150	107	150	107
Safety Harbor Elem.	97	422	229	729
San Jose	20	714	20	714
Seminole Elem.	1	639	1	639

School	*Projected Student Enrollment Under Board's Proposed Plan*		*Projected Student Enrollment Under Modifications Ordered by this Court*	
	Negroes	*Whites*	*Negroes*	*Whites*
Seventy-Fourth St.	0	520	0	520
Shore Acres	0	651	0	651
Skycrest	64	535	64	535
Skyview	0	700	0	700
South Ward	45	515	45	515
Starkey	0	950	0	950
Sunset Hills	32	290	90	322
Sunshine	0	205	0	205
Tarpon Springs	60	574	154	620
Tyrone Elem.	0	680	0	680
Union Academy	139	0	0	0
West Central	215	357	Paired with Wildwood Elem.	
Westgate	0	714	0	714
Wildwood	836	0	819	333
Woodlawn	31	269	164	170
Elementary "A"	68	585	68	585
Elementary "D"	0	652	0	652
Junior High				
Azalea Jr.	0	1275	0	1275
Bay Point Jr.	0	950	0	950
Clw. Comprehensive	100	250	100	250
Disston Jr.	20	980	Paired with Sixteenth St.	
Dunedin Jr.	150	1016	150	1016
Kennedy Jr.	219	1081	219	1081
Largo Jr.	200	1400	200	1400
Lealman Jr.	0	875	0	875
Madeira Beach Jr.	1	1015	1	1015
Meadowlawn Jr.	77	1173	77	1173

School	Projected Student Enrollment Under Board's Proposed Plan		Projected Student Enrollment Under Modifications Ordered by This Court	
	Negroes	Whites	Negroes	Whites
Oak Grove Jr.	0	1350	0	1350
Palm Harbor Jr.	0	217	0	217
Pinellas Park Jr.	0	1450	0	1450
Riviera Jr.	0	1310	0	1310
Safety Harbor Jr.	70	468	70	468
Seminole Jr.	110	890	110	890
Sixteenth St. Jr.	1600	0	1602	971
Southside Jr.	475	225	475	225
Tarpon Springs Jr.	145	455	145	455
Tyrone Jr.	0	1205	0	1205
Senior High				
Boca Ciega Sr.	162	2228	265**	1873
Clearwater Sr.	150	2150	150	2150
Dixie Hollins Sr.	15	2385	15	2385
Dunedin Sr.	175	1325	175	1325
Gibbs Sr.	1075	38	400**	541
Lakewood Sr.	201	1149	124	1136
Largo Sr.	125	1750	125	1750
Northeast Sr.	0	2200	0	2200
St. Petersburg Sr.	160	1064	528**	541
Seminole Sr.	1	1524	1	1524
Tarpon Springs Sr.	75	635	75	635

** The figures given are the results achieved if the first alternative for senior high schools is adopted. Figures resulting if the second alternative is adopted are:

	N	W		N	W
Boca Ciega	395	1873	St. Petersburg	458	1082
Gibbs	0	0	Lakewood	509	955

2. Opinion on Rehearing

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28639

LEON W. BRADLEY, JR., a minor, by LEON W. BRADLEY, SR., his father and next friend, et al., *Plaintiffs-Appellants,*

v.

BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, et al., *Defendants-Appellees.*

Appeal From the United States District Court for the Middle District of Florida

(July 28, 1970)

ON PETITION FOR REHEARING

Before SIMPSON, MORGAN and INGRAHAM, Circuit Judges.

MORGAN, Circuit Judge: In the light of subsequent changes made by the school board in attendance zones and enrollment figures, and in order to incorporate into the Pinellas County school system new schools not shown in the original record, all as set out in the school board's motion for rehearing, the prior opinion and judgment of this court of July 1, 1970, are withdrawn and the following opinion and orders are substituted therefor.

The issue presented in this school desegregation case is whether the Pinellas County, Florida, public school system is unitary. The district court, by its final order of August 4, 1969, held that the desegregation plan submitted by the school board for the year 1969-1970 (hereinafter,

the school board's plan) effectively "converted the old dual system to a unitary system in which racial discrimination is eliminated".[1] The school board's plan was put into effect for the 1969-70 school year even though plaintiffs appealed. From the district court's order, plaintiffs filed notice of appeal to this court on September 12, 1969. Upon oral argument and this court's request for additional findings of fact, the district court entered its supplemental findings on April 18, 1970.

Tested against the six criteria of *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968)—faculty, transportation, staff facilities, extracurricular activities, and student body composition—and the end to be achieved as set out in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969)—that the school system no longer operate as a dual system based on race or color but as a "unitary school system within which no person is to be effectively excluded from any school because of race or color"—we find the school board's plan, as approved by the district court, to be deficient in student assignment in certain schools. In keeping with the approach of *Ellis* v. *The Board of Public Instruction of Orange County, Florida,* 5 Cir., 1970, 423 F. 2d 203; *Mannings* v. *The Board of Public Instruction of Hillsborough County, Florida,* 5 Cir., 1970, —— F. 2d —— [No. 28,643, May 11, 1970]; we will review all the requisites of *Green,* supra, to make a final determination as to whether Pinellas County has been effectively converted into a unitary system.

The Pinellas school system covers the whole of Pinellas County with a land area of 265 square miles. The student population of the system is approximately 80,000, of which 12,700, or 16%, are Negro students. Approximately 9,500

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[1] The school board's plan has been revised and amended throughout the course of litigation. The figures used below are based on school population by race as of April 23, 1970.

of these Negro students live in the City of St. Petersburg, in the southernmost part of the system.

Since 1964, when the original complaint in this case was filed up to the 1969-70 school year, there has been a gradual decrease in the percentage of students in all-Negro schools throughout the entire system. In the 1969-70 school year, there were 102 schools in operation—72 elementary, 19 junior high, and 11 senior high schools. During the 1969-70 school year, 12 elementary schools, one junior high and one senior high school served all-Negro or virtually all-Negro student bodies. Approximately 8,400, or 66%, of the 12,700 Negro students in the entire system at all levels attended all-Negro or virtually all-Negro schools.

Under the school board's plan, the plan approved by the district court, there were to be 107 schools in operation—75 elementary, 20 junior high, and 12 senior high schools. At the elementary level, nine would remain all-Negro or virtually all-Negro. There would also remain the one all-Negro junior high and one all-Negro senior high school. Under this plan, 8,200 out of the 12,700 Negro students in the entire system at all grade levels, or 64%, would attend all-Negro or virtually all-Negro schools.

The school board's plan does not change the already-existing majority-to-minority transfer policy, which during the 1969-70 school year has resulted in the transfer of only 62 students.[2] The plan also leaves intact two bi-racial committees operating in Pinellas County. We do not disapprove of either of these two features of the the school board's plan.

Faculty and Staff

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson Municipal Separate School Dis-*

[2] Fifty of these students, however, were Negroes transferring from all-Negro to predominantly white schools.

trict, 5 Cir., 1969, 119 F. 2d 1211, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. This standard has been met in the Pinellas County school system. According to the school board's "Instructional Personnel Assignments" submitted to this court and dated July 15, 1970, each school system has a faculty composition which closely approximates the 87.5%-white —12.5%-Negro ratio in compliance with Singleton. The Board is ORDERED to implement this faculty and staff assignment for its 1970-71 school year.

TRANSPORTATION, FACILITIES, AND EXTRACURRICULAR ACTIVITIES

From the record, it appears that the Pinellas County transportation system is operated on a desegregated basis. The district court, through its approval of the school board's Exhibits D-1, D-2, and D-3, found that the transportation is equally available to both Negro and white students in Pinellas County.

The facts indicate that the extracurricular activities and facilities of the Pinellas County schools are also operated on a desegregated basis. There is no complaint regarding transportation, extracurricular activities or facilities.

The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson,* supra, as to transportation, school construction, and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined the board's proposed plan, and, on our own initiative, have considered various means of modifying the plan so as to eliminate all-Negro or

virtually all-Negro student bodies while at the same time maintaining the neighborhood school concept of the school system. The Pinellas school board does not purport to use the strict neighborhood assignment system that was applicable in *Ellis,* supra, but rather employs attendance zones based on discretionary zone lines. We find that the situation can be greatly improved by pairing some schools located in close proximity to each other, as was done in *Mannings,* supra, by redrawing the zone lines in several instances, and by grouping several schools into a common attendance zone.

In the following pages of this opinion, we undertake to set out the modifications of the school board's plan which will be necessary to achieve an assignment of students commensurate with a unitary system. The modifications reduce the number of all-Negro or virtually all-Negro elementary schools from nine, as contemplated by the district court-approved board's plan, to three. The modification will desegregate all junior and senior high schools in the system. Instead of 64% of the Negro students being assigned to all-Negro schools, as would be the case under the school board's plan, the result under our modifications will be 14.2% (1,738 students instead of 8,700). Every Negro child will attend an integrated school at some time during his educational career.

Attached as Appendix A is a chart depicting student body composition by school and race under the district court-approved board plan and the plan as modified by this court. The district court is directed to implement the board's plan as herein modified before August 14, 1970.

The majority of the Negro population in the Pinellas school system is situated in a densely populated 40-square-block area in the middle of St. Petersburg. Nine of the 11 schools which would remain all-Negro or virtually all-Negro under the board's plan are located within this area— seven elementary, one junior high, and one senior

high. Together, these nine schools enrolled 7,019, or 58% of the entire Negro student population in the school system, during the 1969-70 school year.

The other two all-Negro or virtually all-Negro schools remaining under the board's plan are located in the urban area of the City of Clearwater in the northern sector of Pinellas County. Both are elementary.[3]

As for the two all-Negro schools in Clearwater, the board has paired Palmetto Elementary (formerly 331 Negroes, 0 white) with Kings Highway (formerly 0 Negro, 718 whites), which schools have contiguous attendance zones and are less than one mile apart. Such a pairing has resulted in an enrollment in the schools of 260 Negroes, 650 whites as of the end of the 1969-70 school year. In light of these facts, we find that Palmetto has been effectively desegregated under this pairing plan.

The remaining all-Negro school in the Clearwater area is Curtis Elementary (362 Negroes, 0 white). The board's earlier attempt to desegregate this school by extending its attendance zone lines northward into the Dunedin attendance zone has not effectively achieved this goal. There being no alternatives submitted by the parties, Curtis is ORDERED to be paired with Dunedin Elementary (31 Negroes, 849 whites) which is approximately two miles to the north. The relative capacities of the schools could be best utilized by housing in Curtis the fifth and sixth grades from both schools and in Dunedin the first through the fourth grades from both schools, though the ultimate grade levels and student assignments are to be made by

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[3] We find that the board's plan for converting Union Academy into a special education center and distributing its Negro student body between Sunset Hills and Tarpon Springs and for implementing a similar plan for Lincoln Heights, and for reassignment of students to desegregate Ridgecrest all are effective in desegregating the three formerly all-Negro schools in the upper part of Pinellas County.

the board. The resulting racial composition in the paired zone is 329 Negroes and 868 whites.

Turning to the nine schools in St. Petersburg which would remain all Negro or virtually all-Negro under the school board's plan, the district court found that as to these schools "no feasible plan" of desegregation was shown other than the school board's plan. On remand for supplemental findings, the district court found that no additional white students would be assigned to these nine schools if the attendance zone lines were changed so that a neighborhood school attendance policy (as set out in *Ellis,* supra) were followed.

We find that the all-Negro or virtually all-Negro junior high school and senior high school in St. Petersburg, as well as four of the seven elementary schools which would remain all-Negro or virtually all-Negro under the board's plan, can be desegregated through pairing, grouping, and relocating of zone lines without creating impractical attendance zones or inordinate transportation problems. In setting out our modifications below for the schools in St. Petersburg, we refer to the zone lines and attendance figures projected by the board for the 1970-71 school year. These lines slightly modify the 1969-70 attendance zone lines in that a small number of Negroes are zoned out of the 40-square-block area and into adjacent zones. However, the seven elementary, the junior high and the senior high schools remain all- or virtually all-Negro. We, therefore, ORDER implementation of the following modifications of these projected zones for the 1970-71 school year.

ELEMENTARY SCHOOLS

Glenoak Elementary (490 Negroes, 7 whites) is bounded on the south by two predominantly white elementary schools—Lakewood Elementary (77 Negroes, 431 whites) and, further south, Bay Vista (7 Negroes, 482 whites)—which are one and one-half miles and two and one-half

miles, respectively, by road from Glenoak. It is ORDERED that Glenoak Elementary be desegregated by implementing either of the following alternative plans:

(1) By pairing Glenoak and Lakewood, resulting in a racial composition in the new school zone of 567 Negroes and 438 whites, or

(2) By grouping Glenoak, Lakewood and Bay Vista, resulting in a racial composition in the one zone in which these three schools are placed of 574 Negroes and 920 whites.

Under either alternative, the school facilities are to be employed in such a manner that will best utilize the school's capacities and as will prove, in the opinion of the board, to be the most educationally sound.

Lakeview Elementary (704 Negroes, 4 whites) is bordered on the south by a new school, Maximo Elementary (78 Negroes, 552 whites), and one mile further south is Bay Point Elementary (3 Negroes, 452 whites). Maximo and Bay Point are two and three miles, respectively, from Lakeview. It is ORDERED that Lakeview Elementary be desegregated by implementing either the following alternative plans:

(1) By pairing Lakeview and Maximo, resulting in a racial composition in the new school zone of 782 Negroes and 556 whites, or

(2) By grouping Lakeview, Maximo and Bay Point, resulting in a racial composition in the one zone in which the three schools are placed of 785 Negroes and 1008 whites.

Again, the manner in which the grade levels and enrollment figures are to be allotted in each school under either alternative must best utilize the schools' capacities and prove, in the opinion of the board, to be most educationally sound.

Wildwood Elementary (752 Negroes, 1 white) is in the northwestern part of the 40-square-block area. It is ORDERED that this school be desegregated in the following manner: The Forest Hills zone line is to be extended into the southeast corner of the Bear Creek zone so as to pick up 50 white elementary students and bring that school down to its capacity. The western zone line of the Fairmount Park zone is to be moved westward in to the Forest Hills zone so as to pick up 100 white elementary students, bringing both Forest Hills and Fairmount Park (with one relocatable placed on the Fairmount Park site) close to their relative capacities. The West Central zone line is to be extended into the southeastern corner of the Mt. Vernon zone so as to take into the West Central zone 100 white elementary students which it can accommodate by placing two relocatables on the West Central site. These zone lines having been thus redrawn, the three schools, Fairmount Park (66 Negroes, 282 whites), West Central (147 Negroes, 432 whites), and Wildwood (752 Negroes, 1 white), all of which have contiguous attendance zones and are approximately one and one-half miles equi-distant from each other, are ORDERED to be grouped, with the grade levels and enrollments in each of the three schools to be allotted in the same manner described in the two preceding paragraphs. The racial composition resulting from such a grouping is 965 Negroes and 715 whites.

Campbell Park (701 Negroes, 0 white) is in the northeastern section of the 40-square-block area, and is bordered on all sides by desegregated schools—West Central (147 Negroes, 432 whites), Euclid (180 Negroes, 53 whites), and Roser Park (165 Negroes, 141 whites)—or all-Negro schools Jordan and Melrose to the southwest. However, approximately one mile further north, there are four all-white schools. Campbell Park is ORDERED to be desegregated in the following manner: The zone lines of Woodlawn are to be extended into the Norwood attendance zone so as to pick up 100 white elementary students. The east-

ernmost part of the Woodlawn zone, east of Ninth Street N., is to be zoned into the Euclid zone (approximately 50 or more white elementary students). The Euclid zone is then to be extended further north into the southern part of the North Shore zone to pick up another 50 white elementary students. While this rezoning leaves Norwood and North Shore short of capacity (42 and 85 students, respectively), it brings both Woodlawn and Euclid—both formerly under-capacity—to full capacity. The zone lines of North Ward Elementary are to be extended northward into the southern part of the North Shore zone so as to pick up 50 white elementary students, bringing North Shore below capacity and requiring full capacity at North Ward, with two relocatables being situated on that site. Having thus redrawn these zone lines, the four schools, Woodlawn (4 Negroes, 320 whites), Euclid (180 Negroes, 153 whites), North Ward (2 Negroes, 348 whites), and Campbell Park (701 Negroes, 0 white), are ORDERED to be grouped with the grade levels and enrollments in each school to be allotted by the school board in the same manner as set forth in the preceding paragraphs. The fourth through the sixth grades in the four zones could be housed in Campbell Park and Euclid, while the first through the third grades could be housed in Woodlawn and North Ward, though such allocation is only one of many ways in which the school board could effectuate this grouping. Such a grouping would involve no more distant traveling than two and one-half miles (the greatest distance among the schools being only two miles) and would result in a racial composition in the one zone in which the four schools are placed of 887 Negroes and 821 whites.

The district court is directed to incorporate any other additional elementary facilities which have heretofore not been in operation into the system on a desegregated basis and as will be consistent with the above modifications.

Junior High Schools

The board plan leaves one all-Negro junior high school, Sixteenth Street Junior High (1,573 Negroes, 0 white). Its attendance zone lines are nearly co-extensive with the 40-square-block Negro concentration in St. Petersburg. Of the four contiguous junior high school attendance zones, that of Disston to the west is the zone in which the school itself is closest to Sixteenth Street School. Disston Junior High (29 Negroes, 971 whites) is approximately three miles from Sixteenth Street Junior High. All of the other contiguous junior high attendance zones are more expansive and the junior high schools therein are more distant.

Having considered the capacities of the schools, the distances to be traveled, and the alternatives involving the other junior high schools in St. Petersburg, Disston Junior High is Ordered to be paired with Sixteenth Street Junior High within their present 1969-70 attendance zones.[4] The resulting proportion of Negroes to whites in the new zone would be 1,602 Negroes and 971 whites.

Senior High Schools

Likewise, one senior high school, Gibbs Senior High School (992 Negroes, 1 white) would remain all-Negro under the board plan. Its attendance zone boundaries are exactly co-extensive with the 40-square-block area, and all three contiguous senior high school attendance zones extend outward covering more than twice the area of the Gibbs zone. Two of the three contiguous zones have the high schools situated in relatively close proximity to Gibbs—St. Petersburg Senior High (128 Negroes, 1,082 whites) being one and one-half miles away, and Boca

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[4] Since the capacity of Sixteenth Street Junior High is twice that of Disston Junior High, a feasible pairing plan would assign one of the three grades of these "middle schools" to Disston, and assign the other two grades to Sixteenth Street.

Ciega Senior High (65 Negroes, 1,873 whites) being two miles distant. Desegregation of Gibbs must be accomplished by either of the two following methods:

(1) Extend the zone lines of the Boca Ciega attendance zone into the southwestern section of the Gibbs zone so as to incorporate 200 Negroes into the Boca Ciega zone. Then draw a new zone line running north to south between Gibbs Senior High and St. Petersburg Senior High so as to divide the remaining 800 Negroes in the Gibbs zone and the 1,082 whites in the St. Petersburg High zone equally between St. Petersburg Senior High and Gibbs Senior High. The resulting proportion of Negro to white in these three redrawn zones would be: Boca Ciega—265 Negroes, 1,873 whites (the additional 200 Negroes in the Boca Ciega facility would still leave that facility short of capacity); St. Petersburg—528 Negroes, 541 whites; Gibbs—400 Negroes, 541 whites.

(2) An alternative for the desegregation of Gibbs Senior High is to close the present Gibbs facility and redraw the zone lines of the three contiguous high school zones so as to incorporate in equal numbers the Negro students in the present Gibbs zone. The district court is ORDERED to give consideration to the views of the school board and the advice given the school board by the bi-racial committees as to the choice between the alternatives. The school facilities in the three contiguous high school zones are large and would not be strained by the influx of the additional 330 Negro students.

In conclusions, we feel that the modifications herein ordered to be implemented before the September Term of the 1970-71 school year effectively convert the Pinellas County student body composition into a unitary school system. It is noted that these modifications, while leaving

three all-Negro elementary schools in the center of St. Petersburg, reduce from 64% to 14.2% the percentage of Negroes attending all-Negro schools, and all these Negroes will later attend desegregated junior high and senior high schools.

The district court is further directed to order that a biracial committee similar in function to that established in *Ellis,* supra, be implemented and that the majority to minority transfer policy be made available to all students. See pages 10-11 of *Mobile,* supra, slip opinion, as to the operational correlation between these two features of the school plan for the 1970-71 school year.

Deficiencies To Be Remedied

We conclude that only one of the six elements which go to make up a unitary school system is deficient—student body composition. This deficiency must be remedied not later than August 14, 1970, as heretofore set out.

Once the orders and directions have been effectuated in accordance with the standards heretofore set forth, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court stated in *Green,* supra, ". . . whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed". 391 U.S. 439.

This court, having modified the opinion of July 1, 1970, subject to such modifications, the appellees' petition for rehearing is Denied.

APPENDIX "A"

School	*Projected Student Enrollment Under Board's Proposed Plan*		*Projected Student Enrollment Under Modifications Ordered by this Court*	
	Negroes	*Whites*	*Negroes*	*Whites*
Elementary				
Anona Elem.	120	520	120	520
Azalea Elem.	0	831	0	831
Bay Point Elem.	1	724	See Opinion	
Bay Vista Elem.	0	725	See Opinion	
Bear Creek	0	370	1	354
Belcher Elem.	1	779	1	779
Belleair	70	680	70	680
Blanton	0	610	0	610
Campbell Park	730	0	See Opinion	
Childs Park	200	190	200	190
Clearview Ave.	0	568	0	568
Cross Bayou	0	580	0	580
Curtis Elem.	325	0	329	868
Dunedin Elem.	37	792	Paired with Curtis Elem.	
Euclid	180	53	See Opinion	
Fairmount Park	70	195	See Opinion	
Fifty-Fourth Ave.	0	643	0	643
Forest Hills	0	224	1	161
Fuguitt	0	740	92	595
Glenoak	356	4	See Opinion	
Gulf Beaches	0	377	0	377
Gulfport	6	504	6	504
Harris Elem.	0	194	0	194
High Point Elem.	0	605	0	605
Jordan Elem.	463	0	487	0
Kings Highway	0	760	Paired with Palmetto	
Lakeview	1,090	6	See Opinion	

School	Projected Student Enrollment Under Board's Proposed Plan		Projected Student Enrollment Under Modifications Ordered by This Court	
	Negroes	Whites	Negroes	Whites
Lakewood	See Opinion			
Largo Central	1	659	81	478
Lealman Ave.	0	487	0	487
Lincoln Heights	0	0	0	0
Lynch Elem.	0	934	0	934
Madeira Beach Elem.	0	553	0	553
Maximo	78	552	See Opinion	
Melrose	644	0	636	0
Mildred Helms	0	850	116	681
Mt. Vernon	0	445	0	364
North Shore	0	570	0	449
North Ward-Clw.	170	280	170	280
North Ward-S.P.	14	306	See Opinion	
Northwest	0	385	0	385
Norwood	0	292	0	292
Oakhurst	0	900	133	787
Oldsmar	8	317	8	317
Orange Grove	0	370	0	370
Ozona	0	205	0	205
Palm Harbor	0	225	0	225
Palmetto	331	0	260	650
Pasadena	0	500	0	500
Perkins	694	0	615	0
Pinellas Park	0	708	0	708
Plumb	0	675	0	675
Ponce de Leon	0	775	0	775
Ridgecrest	380	0	64	416
Rio Vista	0	481	0	481
Roser Park	150	107	150	107
Safety Harbor Elem.	97	422	229	729
San Jose	20	714	20	714
Seminole Elem.	1	639	1	639

School	Projected Student Enrollment Under Board's Proposed Plan		Projected Student Enrollment Under Modifications Ordered by this Court	
	Negroes	Whites	Negroes	Whites
Seventy-Fourth St.	0	520	0	520
Shore Acres	0	651	0	651
Skycrest	64	535	64	535
Skyview	0	700	0	700
South Ward	45	515	45	515
Starkey	0	950	0	950
Sunset Hills	32	290	90	322
Sunshine	0	205	0	205
Tarpon Springs	60	574	154	620
Tyrone Elem.	0	680	0	680
Union Academy	139	0	0	0
West Central	215	357	See Opinion	
Westgate	0	714	0	714
Wildwood	836	0	See Opinion	
Woodlawn	31	269	See Opinion	
Elementary "A"	68	585	68	585
Elementary "D"	0	652	0	652
Junior High				
Azalea Jr.	0	1275	0	1275
Bay Point Jr.	0	950	0	950
Clw. Comprehensive	100	250	100	250
Disston Jr.	20	980	Paired with Sixteenth St.	
Dunedin Jr.	150	1016	150	1016
Kennedy Jr.	219	1081	219	1081
Largo Jr.	200	1400	200	1400
Lealman Jr.	0	875	0	875
Madeira Beach Jr.	1	1015	1	1015
Meadowlawn Jr.	77	1173	77	1173
Oak Grove Jr.	0	1350	0	1350

School	Projected Student Enrollment Under Board's Proposed Plan		Enrollment Under Modifications Ordered by this Court Projected Student	
	Negroes	Whites	Negroes	Whites
Palm Harbor Jr.	0	217	0	217
Pinellas Park Jr.	0	1450	0	1450
Riviera Jr.	0	1310	0	1310
Safety Harbor Jr.	70	468	70	468
Seminole Jr.	110	890	110	890
Sixteenth St. Jr.	1600	0	1602	971
Southside Jr.	475	225	475	225
Tarpon Springs Jr.	145	455	145	455
Tyrone Jr.	0	1205	0	1205
Senior High				
Boca Ciega Sr.	162	2228	265**	1873
Clearwater Sr.	150	2150	150	2150
Dixie Hollins Sr.	15	2385	15	2385
Dunedin Sr.	175	1325	175	1325
Gibbs Sr.	1075	38	400**	541
Lakewood Sr.	201	1149	124**	1136
Largo Sr.	125	1750	125	1750
Northeast Sr.	0	2200	0	2200
St. Petersburg Sr.	160	1064	528**	541
Seminole Sr.	1	1524	1	1524
Tarpon Springs Sr.	75	635	75	635

** The figures given are the results achieved if the first alternative for senior high schools is adopted. Figures resulting if the second alternative is adopted are:

	N	W		N	W
Boca Ciega	395	1873	Lakewood	509	955
Gibbs	0	0	St. Petersburg	458	1082

APPENDIX B

DISTRICT COURT JUDGMENT FOLLOWING REMAND

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

No. 64-98-Civ. T.

LEON W. BRADLEY, JR., a minor, by LEON W. BRADLEY, SR. his father and next friend, et al, *Plaintiffs,*

v.

BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, et al, *Defendants.*

FINAL ORDER

On August 4, 1969, this Court entered a Final Order approving Defendant School Board's Revised Plan, as amended, for desegregation of the Pinellas County School System and concluded that said plan effectively "converted the old dual system to a unitary system in which racial discrimination is eliminated." On September 12, 1969, Plaintiffs filed a Notice of Appeal from this Order to the United States Fifth Circuit Court of Appeals and, after oral argument, the Fifth Circuit requested supplemental findings of fact. Pursuant to this order, supplemental findings of fact were filed by this Court on April 28, 1970.

On July 1, 1970, the Fifth Circuit reversed the August 4, 1969, Order of this Court and remanded this cause with certain directions. *Bradley* v. *Board of Public Instruction of Pinellas County, Florida, et al,* No. 28639, — F.2d — (5th Cir., July 1, 1970). However, in light of subsequent changes made by the School Board in attendance

zones and enrollment figures, and in order to incorporate into the Pinellas County School System new schools not shown in the original record, the Fifth Circuit withdrew its July 1, 1970, decision and substituted in lieu thereof a decision dated July 29, 1970. *Bradley* v. *Board of Public Instruction of Pinellas County, Florida, et al,* No. 28639, — F.2d — (5th Cir., July 29, 1970).

The Circuit Court tested the Pinellas County School System against the six criteria enumerated in *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968) i.e., faculty, transportation, staff, facilities, extracurricular activities and student body composition, and the end to be achieved as set out in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969) that the school system no longer operate as a dual system based upon race or color but as a "unitary school system within which no person is to be effectively excluded from any school because of race or color", and made the following conclusions:

Faculty and Staff

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson Municipal Separate School District,* 419 F.2d 1211 (5th Cir. 1969) requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. The Fifth Circuit concluded that this standard has been met in the Pinellas County School System in light of the Board's "Instructional Personnel Assignments" dated July 15, 1970, which indicated that each school system has a faculty composition which closely approximates the 87.5% white - 12.5% Negro ratio in compliance with *Singleton.*

Transportation, Facilities and Extracurricular Activities

After an examination of the record, the Circuit Court concluded that the Pinellas County transportation system is being operated on a desegregated basis and is equally available to both Negro and white students in Pinellas County.

The same was found to be true concerning the extracurricular activities and facilities of the Pinellas County schools.

Student Assignment

With respect to student assignment, the Circuit Court concluded that the Board's Plan, as approved by this Court, was deficient. Accordingly, they considered various means of modifying the plan so as to eliminate all-Negro or virtually all-Negro student bodies while at the same time attempting to maintain the neighborhood school concept and found that by pairing, redrawing zone lines, and by grouping several schools into a common attendance zone, the situation could be greatly improved. The Circuit Court found that these modifications will reduce the number of all-Negro or virtually all-Negro elementary schools from nine to three and will eliminate St. Petersburg Sixteenth Street Junior High School and Gibbs Senior High School from being all-Negro.

The Fifth Circuit also found that instead of 64% of Negro students being assigned to all-Negro schools, the situation under the School Board's Plan, the result under their modification would be 14.2%. Further, every Negro student would attend an integrated school at some time during his educational career.

In their decision the Circuit Court provided alternative plans for the desegregation of Glenoak Elementary, Lakeview Elementary and Gibbs Senior High Schools. In ref-

erence to Gibbs Senior High, the Circuit Court directed this Court to give consideration to the views of the School Board and the advice given the Board by the bi-racial committees before selecting one of the alternatives.

A hearing was held before this Court on August 5, 1970, at which time Defendant filed a Response to the Fifth Circuit's decision of July 29, 1970. In this Response, the Defendant Board concluded that the most educationally sound plan would be to group Glenoak Elementary with Lakewood and Bay Vista, and further that Lakeview be desegregated by grouping Lakeview, Maximo and Bay Point. Concerning Gibbs Senior High, the Bi-Racial Advisory Committee recommended to the Defendant Board that the present Gibbs facility be closed and zone lines for the three contiguous high schools be redrawn so as to incorporate those Negro students in the present Gibbs zone. Further, the Committee recommended that when Gibbs reopens it do so as a comprehensive high school. Plaintiffs' counsel did not object to the Defendants' conclusions concerning the Glenoak and Lakeview Elementary Schools, nor did he object to the Bi-Racial Committee's suggestion concerning Senior High School.

In its Response, Defendant Board also requests the approval by this Court of certain proposed grade assignments not specifically decided by the Circuit Court's Order. Plaintiffs' counsel voiced no objections to these requests.

The Court has otherwise considered the Fifth Circuit's directive, the Response filed by the Defendant Board, and is fully advised in the premises. It is therefore, upon consideration,

ORDERED AND DECREED:

1. That the Defendant School Board's Plan, as amended and revised by the United States Fifth Circuit Court of Appeals in the decision of *Bradley* v. *Board of Public*

Instruction of Pinellas County, Florida, No. 28639, — F.2d — (July 29, 1970), be, and the same is hereby APPROVED and ADOPTED by this Court, and the Defendant School Board is directed to put said plan into operation forthwith and by August 14, 1970, for conduct of its school system for the 1970-1971 school year.

2. That the Defendant School Board is ordered to implement its "Instructional Personnel Assignments" which pertains to faculty and staff assignment for its 1970-1971 school year.

3. That the Defendant School Board is directed and ordered to maintain the continued desegregation of facilities and extracurricular activities.

4. That the transportation system shall be completely re-examined regularly by the Superintendent, his staff, and the School Board. Bus routes and the assignment of students to the buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

5. That all future school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure.

6. That Curtis Elementary be paired with Dunedin Elementary, located approximately two miles to the north. Curtis Elementary will consist of kindergarten and grades 5 and 6. Dunedin Elementary will have a kindergarten and also grades 1, 2, 3 and 4.

7. That Glenoak Elementary be desegregated by grouping Glenoak, Lakewood and Bay Vista, resulting in a racial composition in the one zone in which these three schools are placed of 574 Negroes and 920 whites. Glenoak will

serve kindergarten and grades 5 and 6; Lakewood will serve kindergarten and grades 1, 2, 3 and 4; and Bay Vista, kindergarten and grades 1, 2, 3 and 4.

8. It is ordered that Lakeview Elementary be desegregated by grouping Lakeview, Maximo and Bay Point, resulting in a racial composition in the one zone in which the three schools are placed of 785 Negroes and 1,008 whites. Lakeview will consist of kindergarten and grades 5 and 6; Maximo, grades 1, 2, 3 and 4; and Bay Point of kindergarten and grades 1, 2, 3 and 4.

9. It is ordered that Wildwood Elementary School be desegregated in the following manner: The Forest Hills zone line is to be extended into the southeast corner of the Bear Creek zone so as to pick up 50 white elementary students and bring that school down to its capacity. The Western zone line of the Fairmount Park zone is to be moved westward into the Forest Hills zone so as to pick up 100 white elementary students, bringing both Forest Hills and Fairmount Park (with one relocatable placed on the Fairmount Park site) close to their relative capacities. The West Central zone line is to be extended into the southeastern corner of the Mt. Vernon zone so as to take into the West Central zone 100 white elementary students which it can accommodate by placing two relocatables on the West Central site. These zone lines having been thus redrawn, the three schools, Fairmount Park (66 Negroes, 282 whites), West Central (147 Negroes, 432 whites), and Wildwood (752 Negroes, 1 white), all of which have contiguous attendance zones and are approximately one and one-half miles equidistant from each other, are ordered to be grouped. The racial composition resulting from such a grouping is 965 Negroes and 715 whites. Under this plan West Central will serve kindergarten and grades 1 and 2; Wildwood will serve kindergarten and grades 3, 4 and 5; and Fairmount Park will serve kindergarten and grade 6.

Instruction of Pinellas County, Florida, No. 28639, — F.2d — (July 29, 1970), be, and the same is hereby APPROVED and ADOPTED by this Court, and the Defendant School Board is directed to put said plan into operation forthwith and by August 14, 1970, for conduct of its school system for the 1970-1971 school year.

2. That the Defendant School Board is ordered to implement its "Instructional Personnel Assignments" which pertains to faculty and staff assignment for its 1970-1971 school year.

3. That the Defendant School Board is directed and ordered to maintain the continued desegregation of facilities and extracurricular activities.

4. That the transportation system shall be completely re-examined regularly by the Superintendent, his staff, and the School Board. Bus routes and the assignment of students to the buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

5. That all future school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure.

6. That Curtis Elementary be paired with Dunedin Elementary, located approximately two miles to the north. Curtis Elementary will consist of kindergarten and grades 5 and 6. Dunedin Elementary will have a kindergarten and also grades 1, 2, 3 and 4.

7. That Glenoak Elementary be desegregated by grouping Glenoak, Lakewood and Bay Vista, resulting in a racial composition in the one zone in which these three schools are placed of 574 Negroes and 920 whites. Glenoak will

serve kindergarten and grades 5 and 6; Lakewood will serve kindergarten and grades 1, 2, 3 and 4; and Bay Vista, kindergarten and grades 1, 2, 3 and 4.

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9. It is ordered that Wildwood Elementary School be desegregated in the following manner: The Forest Hills zone line is to be extended into the southeast corner of the Bear Creek zone so as to pick up 50 white elementary students and bring that school down to its capacity. The Western zone line of the Fairmount Park zone is to be moved westward into the Forest Hills zone so as to pick up 100 white elementary students, bringing both Forest Hills and Fairmount Park (with one relocatable placed on the Fairmount Park site) close to their relative capacities. The West Central zone line is to be extended into the southeastern corner of the Mt. Vernon zone so as to take into the West Central zone 100 white elementary students which it can accommodate by placing two relocatables on the West Central site. These zone lines having been thus redrawn, the three schools, Fairmount Park (66 Negroes, 282 whites), West Central (147 Negroes, 432 whites), and Wildwood (752 Negroes, 1 white), all of which have contiguous attendance zones and are approximately one and one-half miles equidistant from each other, are ordered to be grouped. The racial composition resulting from such a grouping is 965 Negroes and 715 whites. Under this plan West Central will serve kindergarten and grades 1 and 2; Wildwood will serve kindergarten and grades 3, 4 and 5; and Fairmount Park will serve kindergarten and grade 6.

10. Campbell Park is ordered to be desegregated in the following manner: The zone lines of Woodlawn are to be extended into the Norwood attendance zone so as to pick up 100 white elementary students. The easternmost part of the Woodlawn zone, east of Ninth Street North, is to be zoned into the Euclid zone (approximately 50 or more white elementary students). The Euclid zone is then to be extended further north into the southern part of the North Shore zone to pick up another 50 white elementary students. While this rezoning leaves Norwood and North Shore short of capacity (52 and 85 students, respectively), it brings both Woodlawn and Euclid—both formerly under capacity —to full capacity. The zone lines of North Ward Elementary are to be extended northward into the southern part of the North Shore zone so as to pick up 50 white elementary students, bringing North Shore below capacity and requiring full capacity at North Ward, with two relocatables being on that site. Having thus redrawn these zone lines, the four schools, Woodlawn (4 Negroes, 320 whites), Euclid (180 Negroes, 153 whites), North Ward (2 Negroes, 348 whites), and Campbell Park (701 Negroes, 0 whites), are ordered to be grouped. Under this plan, North Ward will serve grades 1 and 2; Euclid will serve kindergarten and grade 3; Woodlawn will serve kindergarten and grades 1 and 2; and Campbell Park will serve kindergarten and grades 4, 5 and 6.

11. Disston Junior High is ordered to be paired with Sixteenth Street Junior High within their present 1969-70 attendance zones. Grades 8 and 9 will attend Sixteenth Street Junior High, and grade 7 will attend Disston.

12. That Gibbs Senior High School be desegregated by closing the present Gibbs facility and redrawing the zone lines of the three contiguous high school zones so as to incorporate in equal numbers the Negro students in the present Gibbs zone.

13. That a bi-racial committee of the type descril ed in *Ellis* v. *Board of Public Instruction of Orange C unty, Florida,* 423 F.2d 203 (1970) be established, if this h s not already been done. This committee shall serve in a n advisory capacity to the School Board in the areas f the operation of the majority to minority transfer rul e, the promulgation and maintenance of zone lines, and in school site location.

14. That the school district shall permit any s tudent attending a school in which his race is in the majo ity to choose to attend another school where his race is in the minority. Further, all transferring students must b given transportation, if they desire it, and transferees ar to be given priority for space. *Davis* v. *Board of Schoo Commissioners of Mobile County,* — F.2d — (5th Ci ., No. 29332, June 8, 1970).

15. That this Court retains jurisdiction of this ca se for the entering of such further orders as may be ne ssary or advisable in the enforcement of this Order and to sure that the Pinellas County School System is operate ed in a constitutional manner.

DONE and ORDERED at Tampa, Florida, this 6th day of August, 1970.

/s/ JOSEPH P. LIEB
United States District Judge